

September 11, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
ENTERGY NUCLEAR OPERATIONS, INC.)	Docket Nos. 50-247/286-LR
)	
(Indian Point Nuclear Generating)	
Units 2 and 3))	

NRC STAFF'S UNOPPOSED REQUEST FOR AN EXTENSION OF TIME
TO RESPOND TO THE STATE OF NEW YORK'S MOTION FOR
PARTIAL SUMMARY DISPOSITION OF NYS CONTENTION 16/16A

Pursuant to 10 C.F.R. § 2.323(a), the NRC Staff ("Staff") hereby requests an extension of time, until October 13, 2009, to respond to the "Motion for Summary Disposition on Use of Straight Line Gaussian Air Dispersion Model for the Environmental Impact Analysis of Significant Radiological Accidents at Indian Point and NYS Contention 16/16A" ("NYS Motion") submitted by the State of New York ("New York," "the State," or "NYS") in this proceeding.¹ In support of this request, the Staff states as follows:

1. On April 23, 2007, Entergy Nuclear Operations, Inc. ("Entergy" or Applicant") submitted its license renewal application ("LRA") for Indian Point Nuclear Generating Units 2 and 3 ("Indian Point"). Included as Appendix E to the LRA was an Environmental Report ("ER"), in which the Applicant presented a Severe Accident Mitigation Alternatives ("SAMA") analysis. ER § 4.21, at 4-47 – 4-78. As indicated therein, the Applicant's SAMA analysis

¹ The State served a copy of its Motion and supporting documents on Staff counsel by mail on Friday, August 28, 2009, and served a Certificate of Service attesting to such service on August 29, 2009; service by mail thus appears to have been completed on August 29, 2009. See 10 C.F.R. §§ 2.302(c), 2.302(d)(1), and 2.305(d) and (f). The State also transmitted a copy of its Motion, Statement of Material Facts, and supporting exhibits by E-mail late on the evening of August 28, 2009, and it transmitted a certificate attesting to such service on August 31, 2009; the State's electronic service of its Motion, in its entirety, was thus complete on August 31. See 10 C.F.R. §§ 2.302(c), 2.302(d)(1) and 2.305(f). The Staff notes that the State's position is that it completed service on August 28, 2009.

included a Probabilistic Safety Assessment model that utilized the Melcor Accident Consequences Code System 2 ("MACCS2") computer code to convert release input to public dose and offsite property damage. *Id.* at 4-48.

2. On November 30, 2007, New York filed its petition for leave to intervene in this proceeding, along with 32 contentions challenging the Indian Point LRA.² On July 31, 2008, the Atomic Safety and Licensing Board ("Board") admitted NYS Contention 16. *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 218 (2008). As admitted and summarized by the Board, NYS Contention 16 raises the following three issues:

NYS challenges whether the population projections used by Entergy are underestimated. And also, within the framework of the bounding assumptions and conservative inputs used in MACCS2 SAMA analyses, whether the ATMOS module in MACCS2 is being used beyond its range of validity – beyond thirty-one miles (fifty kilometers) – and, whether use of MACCS2 with the ATMOS module leads to non-conservative geographical distribution of radioactive dose within a fifty-mile radius of IPEC.

Entergy Nuclear Operations, Inc. (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 218 (2008); *see also*, NYS Petition at 163-67.

3. On December 22, 2008, the Staff issued its Draft Supplemental Environmental Impact Statement ("Draft SEIS") concerning the Indian Point Units 2 and 3 license renewal application.³ On February 27, 2009, New York filed several new and amended contentions challenging the adequacy of the Draft SEIS.⁴ On June 16, 2009, the Board admitted NYS Contention 16A, which presents its challenges to the Applicant's SAMA analysis as challenges

² "New York State Notice of Intention to Participate and Petition to Intervene" (Nov. 30, 2007) ("NYS Petition").

³ "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38, Regarding Indian Point Nuclear Generating Units 2 and 3, Draft Report for Comment," NUREG-1437 (Dec. 2008) (ADAMS Accession Nos. ML083540594, ML083540614).

⁴ "State of New York Contentions Concerning NRC Staff's Draft Supplemental Environmental Impact Statement" (Feb. 27, 2009).

to the Staff's acceptance of that analysis in the Draft SEIS.⁵ As stated by the Board, NYS

Contention 16A asserts:

NYS-16-A – The [Draft SEIS] improperly accepted Entergy's population dose estimates of radiation released in a severe accident despite the Licensing Board's Admission of the State of New York's contention that the air dispersion model used by Entergy in its SAMA analysis will not accurately predict the geographic dispersion of released radionuclides and will result in an inaccurate estimate of the costs of human exposure.

Order of June 16, 2009, at 4. Upon admitting this contention, the Board consolidated it with NYS Contention 16. *Id.* at 7.

4. On August 28 - 31, 2009, New York transmitted its motion for summary disposition of NYS Contention 16/16A. New York's motion presents a detailed criticism of the air dispersion model used in the Applicant's SAMA analysis, as particularized in 68 "material facts" which New York contends are "not in dispute"; and is supported by a 28-page Declaration by Bruce A. Egan and 13 numbered exhibits. New York seeks summary disposition of the atmospheric modeling issues raised in NYS Contentions 16/16A, but does not presently seek summary disposition of other matters raised in these contentions.

5. The Staff has reviewed New York's Motion and supporting documentation, and has determined that it disagrees with various "material facts" which New York contends are not in dispute. For example, New York's challenge to the Applicant's SAMA analysis consists, in part, of a challenge to the atmospheric plume dispersion model ("ATMOS") that is incorporated in the MACCS2 code -- which the Staff has found acceptable for use in SAMA analyses; further, while New York's Motion relies on statements made by NRC officials or other persons in the context of radiological emergency preparedness, the Staff considers such statements to be

⁵ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Ruling on New York State's New and Amended Contentions)" (June 16, 2009), slip op. at 4-7.

wholly inapposite here, with respect to the use of probabilistic accident sequence and consequence modeling in SAMA analyses. Accordingly, the Staff has determined that it will file a response in opposition to the State's Motion, along with a detailed assessment of the Motion by NRC employees and consultants. At this time, the Staff anticipates that it will file a detailed statement of the material facts which it believes are in dispute, along with the declarations of two NRC employees and two consultants employed by Sandia National Laboratory ("Sandia"), who have personal knowledge and expertise in the matters raised in New York's Motion.

6. Pursuant to 10 C.F.R. § 2.1205(b), responses to New York's Motion are due to be filed within 20 days after service of the entire filing was completed (or within 23 days if service was completed by mail), *i.e.*, on or before September 21, 2009. *See* n. 1, *supra*.⁶ The Staff has determined, however, that it will be unable to file its response to New York's Motion within the required time period, due to previously scheduled travel and other unavoidable obligations affecting three of its four expert witnesses, and the organizational need for Sandia management and counsel to review the written statements prepared by the Sandia consultants prior to filing. In this regard, the Staff notes that one of its experts is not available until September 23, and one or both of the Sandia experts are unavailable from September 14 to October 6, 2009. As a result of these previously existing and unavoidable scheduling conflicts, the Staff has determined that its response to New York's Motion can not be filed before October 13, 2009.

7. Counsel for the Staff believes that an extension of time until October 13, 2009 will not result in hardship for any other party and will not cause any delay in the proceeding -- particularly because hearings have not yet been scheduled, and the Staff's Final SEIS is not expected to be issued until February 2010.

⁶ The State has indicated its view is that the Staff's response is due on or before September 17, 2009, which is twenty days from the State's August 28, 2009 electronic service of the motion and supporting documents, without a certificate of service. This matter is addressed *supra*, in n.1.

8. In accordance with 10 C.F.R. § 2.323(a), Staff Counsel has contacted Counsel for the State, the Applicant, Riverkeeper, Inc. ("Riverkeeper"), and Hudson Sloop Clearwater, Inc. ("Clearwater"), all of whom stated that they had no objection to the request for an extension of time.

WHEREFORE, the Staff respectfully requests that it be afforded an extension of time, until October 13, 2009, in which to file its response to New York's motion for summary disposition of NYS Contention 16/16A.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "S. Turk", written over a horizontal line.

Sherwin E. Turk
Beth N. Mizuno
Counsel for NRC Staff

Dated at Rockville, Maryland
this 11th day of September 2009

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ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247/286-LR
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S UNOPPOSED REQUEST FOR AN EXTENSION OF TIME TO RESPOND TO THE STATE OF NEW YORK'S MOTION FOR PARTIAL SUMMARY DISPOSITION OF NYS CONTENTION 16/16A," dated September 11, 2009, have been served upon the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 11th day of September, 2009:

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